

AMENDED IN SENATE MAY 22, 2003

AMENDED IN SENATE APRIL 21, 2003

**SENATE BILL**

**No. 578**

**Introduced by Senator Alarcon**

February 20, 2003

---

---

An act to amend Section 6108 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 578, as amended, Alarcon. Public contracts: sweatshop labor.

Existing law requires state agencies to provide in every contract for procurement of equipment, materials, or supplies, other than procurement related to a public works contract, that the contractor certify that no foreign-made equipment, materials, or supplies provided under contract are produced by forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit thereof.

This bill would expand the prohibition to public works contracts, delete the foreign-made restriction, include garments, apparel, and corresponding accessories as a subject of procurements, impose new requirements upon contractors including a code of conduct, expand the definition of state agency, ~~provide for a contracting preference~~, and make legislative findings and declarations in connection therewith. This bill would also impose a state-mandated local program by requiring contractors to ensure that their subcontractors comply in writing with a specified code of conduct, under penalty of perjury.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares:

2 (a) The State of California spends millions in public funds on  
3 garments, uniforms, materials, and supplies provided or laundered  
4 by private bidders, vendors, and contractors.

5 (b) The state recognizes a public interest in avoiding subsidies  
6 to bidders and contractors whose workplaces represent sweatshop  
7 conditions, including violation of recognized standards of wages,  
8 workplace health and safety, child labor, nondiscrimination and  
9 nonharrasment, and the rights of workers to assemble and choose  
10 to bargain collectively.

11 (c) Thousands of workers are employed in sweatshop  
12 conditions in the State of California, and southern California has  
13 been identified as the sweatshop capital of the United States.

14 (d) The state recognizes the rights of its citizens to information  
15 and choice with regard to the expenditure of its tax dollars.

16 (e) The state has an interest in providing incentives for  
17 responsible bidders.

18 (f) The state shall establish a “sweat-free” procurement policy  
19 and code of conduct that ensures that apparel, garments, and  
20 corresponding accessories, equipment, materials, and supplies  
21 purchased by the state or its agencies be produced in workplaces  
22 free of sweatshop conditions.

23 SEC. 2. Section 6108 of the Public Contract Code is amended  
24 to read:

25 6108. (a) (1) Every contract entered into by any state agency  
26 for the procurement or laundering of apparel, garments, or  
27 corresponding accessories, or the procurement of equipment,  
28 materials, or supplies shall require that a contractor certify that no  
29 apparel, garments, or corresponding accessories, equipment,  
30 materials, or supplies furnished to the state pursuant to the contract  
31 have been laundered or produced in whole or in part by sweatshop

1 labor, forced labor, convict labor, indentured labor under penal  
2 sanction, abusive forms of child labor or exploitation of children  
3 in sweatshop labor, or with the benefit of sweatshop labor, forced  
4 labor, convict labor, indentured labor under penal sanction,  
5 abusive forms of child labor or exploitation of children in  
6 sweatshop labor. The contractor shall agree to comply with this  
7 provision of the contract.

8 (2) The contract shall specify that the contractor is required to  
9 cooperate fully in providing reasonable access to the contractor's  
10 records, documents, agents or employees, or premises if  
11 reasonably required by authorized officials of the contracting  
12 agency, the Department of Industrial Relations, or the Department  
13 of Justice to determine the contractor's compliance with the  
14 requirements under paragraph (1).

15 (b) (1) Any contractor contracting with the state who knew or  
16 should have known that the apparel, garments, or corresponding  
17 accessories, equipment, materials, or supplies furnished to the  
18 state were laundered or produced in violation of the conditions  
19 specified in subdivision (a) when entering into a contract pursuant  
20 to subdivision (a), may, subject to subdivision (c), have any or all  
21 of the following sanctions imposed:

22 (A) The contract under which the prohibited apparel, garments,  
23 or corresponding accessories, equipment, materials, or supplies  
24 were laundered or provided may be voided at the option of the state  
25 agency to which the equipment, materials, or supplies were  
26 provided.

27 (B) The contractor may be assessed a penalty which shall be the  
28 greater of one thousand dollars (\$1,000) or an amount equaling 20  
29 percent of the value of the apparel, garments, or corresponding  
30 accessories, equipment, materials, or supplies that the state agency  
31 demonstrates were produced in violation of the conditions  
32 specified in paragraph (1) of subdivision (a) and that were supplied  
33 to the state agency under the contract.

34 (C) The contractor may be removed from the bidder's list for  
35 a period not to exceed 360 days.

36 (2) Any moneys collected pursuant to this subdivision shall be  
37 deposited into the General Fund.

38 (c) (1) When imposing the sanctions described in subdivision  
39 (b), the contracting agency shall notify the contractor of the right  
40 to a hearing if requested within 15 days of the date of the notice.

1 The hearing shall be before an administrative law judge of the  
2 Office of Administrative Hearings in accordance with the  
3 procedures specified in Chapter 5 (commencing with Section  
4 11500) of Part 1 of Division 3 of Title 2 of the Government Code.  
5 The administrative law judge shall take into consideration any  
6 measures the contractor has taken to ensure compliance with this  
7 section, and may waive any or all of the sanctions if it is determined  
8 that the contractor has acted in good faith.

9 (2) The agency shall be assessed the cost of the administrative  
10 hearing, unless the agency has prevailed in the hearing, in which  
11 case the contractor shall be assessed the cost of the hearing.

12 (d) (1) Any state agency that investigates a complaint against  
13 a contractor for violation of this section may limit its investigation  
14 to evaluating the information provided by the person or entity  
15 submitting the complaint and the information provided by the  
16 contractor.

17 (2) Whenever a contracting officer of the contracting agency  
18 has reason to believe that the contractor failed to comply with the  
19 requirements under paragraph (1) of subdivision (a), the agency  
20 shall refer the matter for investigation to the head of the agency  
21 and, as the head of the agency determines appropriate, to the  
22 Director of Industrial Relations or the Attorney General.

23 (e) (1) For purposes of this section, the term “forced labor”  
24 shall have the same meaning as in Section 1307 of Title 19 of the  
25 United States Code.

26 (2) “Abusive forms of child labor” means any of the  
27 following:

28 (A) All forms of slavery or practices similar to slavery, such as  
29 the sale and trafficking of children, debt bondage, and serfdom and  
30 forced or compulsory labor, including forced or compulsory  
31 recruitment of children for use in armed conflict.

32 (B) The use, procuring or offering of a child for prostitution,  
33 for the production of pornography, or for pornographic  
34 performances.

35 (C) The use, procuring or offering of a child for illicit activities,  
36 in particular for the production and trafficking of illicit drugs.

37 (D) All work or service exacted from or performed by any  
38 person under the age of 18 either under the menace of any penalty  
39 for its nonperformance and for which the worker does not offer

1 oneself voluntarily or under a contract the enforcement of which  
2 can be accomplished by process or penalties.

3 (E) All work or service exacted from or performed by a child  
4 in violation of all applicable laws of the country of manufacture  
5 governing the minimum age of employment, compulsory  
6 education, and occupational health and safety.

7 (3) “Exploitation of children in sweatshop labor” means all  
8 work or service exacted from or performed by any person under  
9 the age of 18 years in violation of more than one law of the country  
10 of manufacture governing wage and benefits, occupational health  
11 and safety, nondiscrimination, and freedom of association  
12 including the right to organize unions to bargain collectively.

13 (4) “State agency” means any state agency in this state and  
14 includes, but is not limited to, any school district, college,  
15 university, jail, prison, and law enforcement agency.

16 (f) (1) The state shall establish a contractor responsibility  
17 program, including a Sweatfree Code of Conduct, to be signed by  
18 all bidders on state contracts and subcontracts. Any state agency  
19 responsible for procurement shall ensure that the Sweatfree Code  
20 of Conduct is available for public review at least 30 calendar days  
21 between the dates of receipt and the final award of the contract.

22 (2) Every contract entered into by any state agency for the  
23 procurement or laundering of apparel, garments, or corresponding  
24 accessories, or for the procurement of equipment or supplies, shall  
25 require that the contractor certify in accordance with the Sweatfree  
26 Code of Conduct that no apparel, garments, or corresponding  
27 accessories, or equipment, materials, or supplies, furnished to the  
28 state pursuant to the contract have been laundered or produced, in  
29 whole or in part, by sweatshop labor.

30 (3) The appropriate procurement agency, in consultation with  
31 the Director of Industrial Relations, shall employ a phased and  
32 targeted approach to implementing the Sweatfree Code of  
33 Conduct. Sweatfree Code of Conduct procurement policies  
34 involving apparel, garments, and corresponding accessories may  
35 be permitted a phasein period of up to one year for purposes of  
36 feasibility and providing sufficient notice to contractors and the  
37 general public. The appropriate procurement agency, in  
38 consultation with the Director of Industrial Relations, shall target  
39 other procurement categories based on the magnitude of verified  
40 sweatshop conditions and the feasibility of implementation, and

1 may set phasein goals and timetables of up to three years in order  
2 to achieve compliance with the principles of the Sweatfree Code  
3 of Conduct.

4 (4) To ensure public access and confidence, the state shall  
5 ensure public awareness and access to proposed contracts by  
6 posting on the Internet and through communication to advocates  
7 for garment workers, unions, and other interested parties. The  
8 appropriate agencies shall establish a mechanism for soliciting and  
9 reviewing any information indicating violations of the Sweatfree  
10 Code of Conduct by prospective or current bidders, contractors, or  
11 subcontractors. The agencies shall make their findings public  
12 when it rejects allegations against bidding or contracting parties.

13 (5) Contractors shall ensure that their subcontractors comply in  
14 writing with the Sweatfree Code of Conduct, under penalty of  
15 perjury. Contractors shall attach a copy of the Sweatfree Code of  
16 Conduct to the certification required by subdivision (a).

17 (g) No ~~public~~ state agency may enter into a contract with any  
18 contractor with respect to whom any of the following requirements  
19 are not met:

20 (1) Contractors and subcontractors in California shall comply  
21 with all appropriate state laws concerning wages, workplace  
22 safety, rights to collective bargaining, and nondiscrimination  
23 standards as well as appropriate federal laws. Contractors based in  
24 other states in the United States shall comply with all appropriate  
25 laws of their states and appropriate federal laws. For contractors  
26 whose locations for manufacture or assembly are outside the  
27 United States, those contractors shall ensure that their  
28 subcontractors comply with the appropriate laws of countries  
29 where the facilities are located.

30 (2) Contractors and subcontractors shall maintain a policy of  
31 not terminating any employee except for just cause, and  
32 employees shall have access to a mediator or to a mediation  
33 process to resolve certain workplace disputes that are not regulated  
34 by the National Labor Relations Board.

35 (3) Contractors and subcontractors shall ensure that workers  
36 are paid wages and provided benefits that *provide for minimum*  
37 *basic needs and that* are sufficient to lift their families above  
38 ~~poverty-poverty~~, and that workers are not denied the right to  
39 organize and to enter into collective bargaining agreements for  
40 better wages and benefits. Whenever feasible, state agencies shall

express a preference for an adjusted living wage. In determining whether wages and benefits provide for minimum basic needs, the agency, in consultation with the Director of Industrial Relations, may examine various minimum wage and benefit methodologies. When necessary, the state may use an index of purchasing power for a foreign currency averaged over the calendar year preceding the date the contract was entered into. In order to apply wage and benefit standards to production that occurs outside of the United States, the state may adjust the wage and benefit level to reflect that country's level of economic development relative to that of the United States, as indicated by that country's actual per capita nonmilitary expenditures. Wages shall be measured as a take-home or net wage earned during the maximum workweek, but not more than 48 hours, as allowed by that country.

(4) Workers shall not (A) be required to work more than the limits on regular hours allowed by the law of the country of manufacture or 48 hours per week, whichever is less, and (B) be entitled to at least one day off in every seven-day period, as well as holidays and vacations.

(5) All overtime hours shall be worked voluntarily. Workers shall be compensated for overtime at either (A) the rate of compensation for regular hours of work, or (B) as legally required in the country of manufacture, whichever is greater.

(6) No person may be employed who is younger than the legal age for children to work in the country in which the facility is located. In no case may children under the age of 15 years be employed in the manufacturing process. Where the age for completing compulsory education is higher than the standard for minimum age of employment, the age for completing education shall apply to this section.

(7) There may be no form of forced labor of any kind, including slave labor, prison labor, indentured labor, or bonded labor, including forced overtime hours.

(8) The work environment shall, at a minimum, be in compliance with relevant local, state, and national laws. If residential facilities are provided to workers, they shall be safe and healthy. Any garment contractor shall ensure that its direct operations and those of any subcontractor keep and maintain records documenting its health and safety programs on site (such





1 as facility and equipment inspections, workplace air samplings,  
2 accident investigations, and employee training).

3 (9) There may be no discrimination in hiring, salary, benefits,  
4 performance evaluation, discipline, promotion, retirement or  
5 dismissal on the basis of age, sex, pregnancy, maternity leave  
6 status, marital status, race, nationality, country of origin, ethnic  
7 origin, disability, sexual orientation, religion, or political opinion.

8 (10) No worker may be subjected to any physical, sexual,  
9 psychological, or verbal harassment or abuse, including corporal  
10 punishment. Every worker shall be treated with dignity and  
11 respect.

12 (11) In case of contractors and subcontractors outside of the  
13 United States, those contractors and subcontractors shall  
14 recognize and respect the right to free association and collective  
15 bargaining. No employee may be subject to harassment,  
16 intimidation, or retaliation. Those contractors and subcontractors  
17 shall allow unions freedom of access to employees and recognize  
18 unions of the workers' choice.

19 (12) Female workers shall be provided equal pay and benefits,  
20 equal treatment, equal evaluations, and equal opportunities to fill  
21 positions with male workers. No worker may be forced to use  
22 contraceptives or take pregnancy tests. No worker may be exposed  
23 to chemicals, including glues and solvents, that endanger  
24 reproductive health.

25 (13) Contractors and bidders shall list the names and addresses  
26 of each subcontractor to be utilized in the performance of the  
27 contract, and list each manufacturing or other facility or operation  
28 of the contractor or subcontractor for performance of the contract.  
29 The list, which shall be maintained and updated to show any  
30 changes in subcontractors during the term of the contract, shall  
31 provide company names, owners or officers, addresses, telephone  
32 numbers, e-mail addresses, and the nature of the business  
33 association.

34 ~~(h) State agencies shall grant a preference in contracts for~~  
35 ~~competitive bids on appeal by firms whose production is based in~~  
36 ~~California, and the bid is not greater than 10 percent more than the~~  
37 ~~lowest bid by an otherwise responsible bidder.~~

38 SEC. 3. No reimbursement is required by this act pursuant to  
39 Section 6 of Article XIII B of the California Constitution because  
40 the only costs that may be incurred by a local agency or school



1 district will be incurred because this act creates a new crime or  
2 infraction, eliminates a crime or infraction, or changes the penalty  
3 for a crime or infraction, within the meaning of Section 17556 of  
4 the Government Code, or changes the definition of a crime within  
5 the meaning of Section 6 of Article XIII B of the California  
6 Constitution.

O

